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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,459	01/15/2004	Thomas Lummis	4243-02700	5873
30652 7590 08/08/2008 CONLEY ROSE, P.C. 5601 GRANITE PARKWAY, SUITE 750 PLANO, TX 75024				
EXAMINER				
MAL, TRI M				
ART UNIT		PAPER NUMBER		
3781				
MAIL DATE		DELIVERY MODE		
08/08/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/758,459

**Applicant(s)**

LUMMIS ET AL.

**Examiner**

Tri M. Mai

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF 298)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the buckle in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to the optimizing relocation of forces, Applicant's assertion that having only one support as compared having multiple support location would enhance the cover's ability to withstand peak wind condition contradicts physic laws as set forth in the previous Office Action.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Porter (5904243), or in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Porter in view of Frieder et al. (3011820). Porter teaches a the securing of a cover comprising the steps of placing the cover over the module and threading a securing strap through a channel in the cover and tightening the securing strap about the module as claimed. Porter meets all claimed limitations except for the limitation of having no more than one point of contact between the securing strap and support straps. It would have been obvious to one of ordinary skill in the art to provide only one support to provide the desired number of support and/or to save material. Furthermore, it would have been obvious to one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969).

In the alternative, Frieder teaches that it is known in the art to provide the sides with only one support (note figures 1, and 4). It would have been obvious to one of ordinary skill in the art to provide only one support, as taught by Frieder, to provide the desired number of support and/or to save material.

4. Claim 1-3, 5, 6, 9-11, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection, as set forth above, and further in view of either Horwath (2003/0226846) or Gallagher (4308905). It would have been obvious to one of ordinary skill in the art to provide another channel on the other end wall to provide added security. Furthermore, it would have been obvious to a person having ordinary skill in the art to duplicate parts for a multiplied effect (*St. Regis Paper Co. v. Bemis Co., Inc.*)193 USPQ 8, 11 (7th Cir. 1977).

With respect to support strap at the midpoint, to have the only one support strap in the modified cover of Porter to be placed at the midpoint at the corresponding side walls would have

been obvious to provide the desired placement of the support strap. Furthermore, Rearrange parts of an invention involves only routine skill in the art, see *In Re Japikse*, 86 USPQ 70 (CCPA) 1950.

Regarding claim 2, with respect of threading the strap through the first and second support straps, it would have been obvious to one of ordinary skill in the art to eliminate the rings so that the strap are threaded through the first and second support straps to save material. Note that it is within the skill of one of ordinary skill in this art to eliminate the other when its function is not desired. See, *Ex parte Rainu*, 168 USPQ 375 (PTO Bd. Of App. 1969). There are two triangular sections in each of sidewalls as claimed. It is noted that the term section is broad, there are a plurality of section in the cover of Porter, include a triangular section as claimed.

To the degree it is argued that the cover of Porter does not teach the triangular sections, it would have been obvious to one of ordinary skill in the art to make the cover from various sections including triangular sections because construction of a product in unity or diversity would have been an obvious choice of manufacturing or convenience. See, *In re Zabel et al.* 38 C.C.P.A., 832, 186 F.2d 735, 88 USPQ 367.

Regarding claim 16, note the buckle (col. 7, ln. 5)

5. Claims 4, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Porter rejection as set forth in paragraph 4, and further in view of either Campbell (2705461) or Frieder et al. (3011820). It would have been obvious to one of ordinary skill in the art to provide diamond shaped loops, as taught by either Campbell or Frieder to provide an alternative shape loop.

6. Applicant's arguments along with the new Declaration of Mr. Taubert under 37CFR 1.132 have been fully considered but they are not persuasive. Mr. Taubert asserts the superiority of the cover as set forth in the application. Again, the examiner submits that expert's testimony can not take place of evidence, and there is no evidence in this case showing the device with only one point of contact would perform better than the device as applied by Porter at all. as set forth in the previous office action, applicant has the burden of establish results that are unexpected and significant. Furthermore, it is noted that applicants have burden of explaining proffered data and to file an affidavit or declaration under 37 CFR 1.132 to compare the claimed subject matter with the closest prior art to be effective to rebut a prima facie case of obviousness.

Furthermore, in this case, applicant seems to assert superiority over the Porter cover base on the use of single point support. This particularity must be tested and data must be explained so that it is the placement of the single point support is the nexus of the superiority of the cover, and not of other structural changes.

7. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tri M. Mai/  
Primary Examiner, Art Unit 3781